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WILLARD

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IN THE

Supreme Court of the United States

No. 154

JAMES YATES,

Petitioner,

vs.

EDWARD BALL,

Respondent.

REPLY BRIEF FOR PETITIONER.

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REPLY BRIEF FOR PETITIONER.

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States.*

Petitioner respectfully requests the Court's indulgence for a few brief observations in reply to respondent's brief.

I. Is the judgment of the Supreme Court of Florida a final judgment within the meaning of Section 237 of the Judicial Code?

The Court, in its opinion and judgment, directed the following disposition of the case:

“Upon the going down of the mandate the lower court shall make inquiry of the counsel of

record of the respective parties as to whether or not there will be evidence available on a further trial of this cause which would add substantially to the strength of the plaintiff's case. If it shall appear as the result of such inquiry that upon another trial the evidence to be adduced would be substantially the same as that submitted at the trial hereby reviewed, then and in that event, the trial court shall thereupon so adjudge and enter a judgment for the defendant."

The issue of the finality of this judgment is entirely a sham. This case has been tried three times in a *nisi prius* court. There is no reason for the Supreme Court of Florida, for the respondent or for anyone else to think that the petitioner has any new evidence to present in any new trial of this case in any court. The petitioner states now and has always stated that all new evidence has been presented to the trial court in the previous trials. This may be accepted as a final and binding stipulation as to this matter on petitioner's part.

Thus, the action directed by the Supreme Court of Florida is a mere "ministerial act" within the doctrine of *Clark v. Williard*, 292 U. S. 112, 117-119, 133 (1934). See *Brady v. Terminal Railroad Association*, 302 U. S. 678 (1937); *Brady v. Southern Railway Company*, 319 U. S. 777 (1943). Petitioner's case has been put in evidence, and there is nothing more to be done.

II. Would the participation of Justices Adams and Buford constitute a denial of due process and equal protection to petitioner?

This issue, we believe, is adequately presented in the petition and supporting brief. The only question raised in the respondent's reply brief which might call for comment is respondent's effort to cast doubt upon the dominant position of respondent in the banks and corporations with which the two Justices were financially involved. This was not the ground upon which the two Justices refused to disqualify themselves or upon which the Florida Supreme Court acted in denying petitioner suggestion of compulsory disqualification. Therefore, the two Justices, and presumably the court also, relied solely upon the absence of bias consciousness of guilt upon the part of Justices Adams and Buford. There is serious question, therefore, as to how far it is open to respondent to argue this matter, since he did not choose to argue it before the Florida Supreme Court. Statements made by petitioner in his petition for rehearing and suggestion for disqualification were neither denied nor disproved at the time. Furthermore, these statements were accurate. In this connection, we suggest that the Court take judicial notice of the findings of the Interstate Commerce Commission in Finance Docket No. 13170, *Florida East Coast Railway Company Reorganization*, Document 578. At pages 642-48, 663, the Interstate Commerce Commission surveys comprehensively the position of Edward Ball in the duPont banking chain and in the St. Joe Paper Company. The findings of

the Interstate Commerce Commission in this case serve to sustain and indeed amplify petitioner's stand in connection with the dominant position of respondent in these enterprises. They also invite the Court's attention to the findings of the Circuit Court of Appeals in the Fifth Circuit in *Almours Securities, Inc., v. Commissioner*, 91 Fed. 2d 427, 429, and to pages 10,187, *et seq.*, Volume 93 of the Congressional Record for the 80th Congress, First Session, containing Senator McCarran's report as Chairman of a Subcommittee of the Judiciary Committee of the Senate.

It is clear that, so far as the Justices' disqualification was concerned, obligation to the St. Joe Paper Company or the duPont banks was obligation to Ball.

Respectfully submitted,

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APPENDIX "A."

Excerpts from Document 578, Finance Docket No. 13170, *Florida East Coast Railway Company Reorganization*, Third Supplemental Report and Order of Interstate Commerce Commission dated April 8, 1947, Modifying Plan of Reorganization.

Description of the St. Joe Company and other duPont interests. The St. Joe Company owns about 56 percent of the \$45,000,000 principal amount of the debtor's outstanding first and refunding mortgage bonds, which it acquired to that extent for the avowed purpose of obtaining control of the debtor's line of railroad upon its reorganization. The activities, holdings and relationship with the estate of Alfred I. duPont of this company (and its predecessor in interest in this proceeding, the Florida National Building Corporation) have been heretofore generally described in former reports in this proceeding. At the reopened hearings in November, 1945, the record in this respect was greatly amplified.

The trustees of the duPont estate for whom Edward Ball has been the spokesman and active negotiator, if not the dominating influence in this reorganization proceeding, are four in number. They comprise at present Ball, the Florida National Bank of Jacksonville, Jessie Ball duPont, widow of Alfred I. duPont and sister of Edward Ball, and a son-in-law of duPont, Elbert Dent. Vacancies among the trustees are to be filled by the remaining trustees except that Dr. F. P. Gaines, president of Washington and Lee University, is specifically named to succeed Ball. The trustees must act by a majority unless majority decision is impossible, in which case the ruling of the corporate trustee is final.

There is no connection between the estate of Alfred I. duPont and the well-known duPont interests of Wilmington, Delaware. The late Alfred I. duPont was a member of the Wilmington, Delaware family, but disassociated himself from the family interests, except for retaining his holdings of stock of E. I. duPont de Nemours & Company, and moved to Florida to live. None of the trustees now managing the estate are members of the duPont family, except by marriage.

The investments and activities of the estate are large, varied and, except for the original basic investments in E. I. duPont de Nemours & Company and General Motors Corporation, are mostly centered in the State of Florida. The income from the trust estate under the terms of duPont's will is subject to certain annuities and a life interest of duPont's widow, but otherwise is to be devoted to a charitable Delaware corporation to be created by the trustees and entitled "The Nemours Foundation." This foundation is for the purpose of maintaining the family estate in Delaware known as "Nemours" as an institution for the care and treatment of crippled children, not incurable, and the care of old men and women, first consideration to be given to residents of Delaware. Any surplus income may be used in contributions to other worthy charitable institutions established for the same purposes.

As of December 31, 1944, the inventory value of the trust assets was \$49,948,142, of which \$32,591,063 represented stock in the duPont and General Motors companies, \$12,474,104 stock (76½ percent) of the St. Joe Company, \$3,063,784 stocks of Florida banks, \$6,252, bonds of the debtor, \$144,189 other bonds, \$209,060 other securities, \$613,940 real estate, and \$845,750 cash. One of the banks, the investment in which is included, above, owns slightly more than one-half the stock of the Union Terminal Warehouse Company at Jacksonville, Fla., and another one owns a bank and office building at Miami, valued at \$3,261,559.

A balance sheet as of December 31, 1944, of the St. Joe Company shows assets as follows: current assets \$13,648,695, including "investments at cost" \$10,569,643, investments in affiliated companies \$1,204,174, plant property, less depreciation, \$5,207,841, other property less reserves for depreciation and depletion \$5,797,345, other assets \$12,366 and deferred charges \$151,492, total of all assets, \$26,021,913. Liabilities amounted to \$18,107,107, capital surplus to \$5,088,261 and earned surplus to \$2,826,545. Based on present market quotations and values, the value of the assets of the St. Joe Company are greatly in excess of the above book values.

The paper mill owned by the company is located at Port St. Joe on the Gulf of Mexico in northwestern Florida south of Chattahoochee at which point the Apalachicola, which serves the St. Joe Paper Company plant and other industries, connects with the L. & N., Seaboard and Coast Line. All the securities of the Apalachicola are owned by the St. Joe Company. Other investments by the latter company include a large amount of land in west Florida, a telephone and telegraph company operating in and around St. Joe, extensive and valuable real estate holdings, including some hotels, on the east coast of Florida in Jacksonville, Miami, Palatka, Daytona Beach, Fort Pierce, West Palm Beach, and other points, a controlling interest in the Florida National Bank & Trust Company of Miami, \$25,000,000 of the debtor's first and refunding mortgage bonds and an undisclosed amount of the debtor's first-mortgage bonds. Ball and his sister, Mrs. duPont, have a substantial stock interest in the St. Joe Company.

There are 14 Florida banks owned or controlled by the duPont trust (including 1 owned by the St. Joe Company) and 3 other banks in which a substantial and perhaps controlling interest is held. These banks are collectively known as the Florida National Group, and as of June 30, 1945, had combined capital surplus and undivided profits

of about \$14,668,000 and resources of about \$328,662,000.¹⁴ They doubtless have been in large part the medium through which the duPont interests have assisted directly and indirectly in the refunding of over \$100,000,000, par value, of securities of political subdivisions of the State of Florida. The banks are located in St. Petersburg, Pensacola, Orlando, Lakeland, Key West, Ocala, Port St. Joe, Bartow, Starke, Chipley, and at Jacksonville, Miami, West Palm Beach, Daytona Beach, Fort Pierce, Belle Glade and Coral Gables on the east coast. Some of these banks were acquired when they were insolvent during the depression, payment or guaranty of payment of their deposits being made by the duPont interests at the times of acquisition and in some instances assistance was also given in the crisis to banks owned by other interests located in the same communities as the duPont banks.

The Florida National Group of banks and St. Joe Paper Company have invested many millions of dollars in bonds of various political subdivisions of the State of Florida. Further detailed comment on the extent and nature of the interests of the duPont estate will be made in a subsequent section of this report.

Counsel for the Coast Line assert that a mere recital of the facts as to the duPont estate organization and its holdings gives no indication that the estate constitutes what is repeatedly referred to as a "dynamic empire," over which Ball as "emperor" yields ruthless and despotic power adversely affecting the entire economy of Florida.

As evidence that the duPont "empire" is "dynamic" and not "static," it was pointed out that the estate intends to make further large investments in the State of Florida. The estate already has large and extensive investments in Florida and expects to make further investments. There is no doubt that the estate has attained a position of great influence in the State, which position may be expected to become enhanced. The extent and variety

¹⁴The figures do not include one small bank organized subsequent to June 30, 1945.

of the interests of the estate are such that it is very doubtful that it would exercise control of a railroad property in the public interest.

Three instances are presented to support the charge of ruthless domination by Ball as the most influential trustee under the duPont trust: *First*, that during a time when office space was scarce in Miami, Ball required the tenants of a duPont office building in which the Florida National Bank and Trust Company is housed to do their banking with that company as a condition of their tenancy; *second*, alleged distribution of misleading propaganda in connection with the present proceeding; and *third*, alleged improper inducement of the Southern to intervene in this proceeding.

There is no denial of record by the St. Joe Company of the first of the above charges involving a restrictive rental clause. The second and third charges are reviewed later in this report.

The Coast Line also seriously questions the right or propriety of the trustees under the duPont trust (which is a charitable trust) to invest its trust funds in this railroad property. While we do not feel called upon to construe the provisions of the will creating the trust, we should ordinarily scrutinize very carefully, from the standpoint of compatibility with the public interest, the qualification of a charitable trust to manage and operate a large railroad property.

The Coast Line contends that counsel for the St. Joe Company deliberately blocked a proper investigation into the question of the propriety of control by that company of the debtor by refusing to permit Ball to produce documents and data concerning the affairs of his company which were not otherwise available to the Coast Line.

The Coast Line attempted to develop facts pertinent to the fitness of the St. Joe Company to control the debtor through addressing a letter to counsel for St. Joe Company on October 18, 1945, containing advance advice of the position Coast Line would take, namely, that a finding by the

Commission that it would be compatible with the public interest for the St. Joe Company to control the debtor could be based only upon a record containing a full disclosure as to the terms of the will of Alfred I. duPont, the ramifications of the estate, including its organization, policies and procedures, its business relationships with railroads, shippers or other persons who might have business dealings with a reorganized Florida East Coast Railway, and other pertinent information. Comparatively; little of the information sought was introduced into the record. The Coast Line further sought to throw light upon the fitness of St. Joe Company to control the debtor in the public interest through extensive cross-examination of Ball. On cross-examination of Ball by counsel for the Coast Line, Ball was obviously a hostile witness. While responsive in his answers to some of the questions as to details of his own and duPont estate affairs, in answers to many other questions, he was vague, indefinite and adroit. The apparent unwillingness to disclose facts pertinent in determining whether it would be compatible with the public interest for St. Joe Company to acquire control of the debtor's property constitutes an unsatisfactory attitude on the part of the principal witness for that company. While his counsel was not ordered to produce the information, he was advised that the presiding examiner considered that much of the matter should be of record. He was also advised that he should produce such evidence as he deemed necessary to support his case.

In view of the importance attached to the refusal by Ball to disclose allegedly material information with respect to the holdings of the duPont interests, it may be well to refer to the four items upon which the Coast Line relies, as stated by Coast Line counsel on oral argument. These are:

1. A statement of the holdings of the duPont trustees (as individuals) and of any corporation controlled directly or indirectly by the duPont trustees (as

trustees) * * * which would have included the St. Joe Company * * * in the Florida National Group of banks.

2. The annual report of the St. Joe Company.
3. An itemization of the St. Joe Company's "investments at cost," \$10,569,643.19.
4. An itemization of the St. Joe Company's "investments in affiliated companies," \$1,204,173.68.

As to 1, counsel for the St. Joe Company objected to the witness being required to furnish the requested detailed personal information on various grounds, one being that the information requested was irrelevant since the witness had already testified that the duPont estate has control, directly or through the St. Joe Company, of all except two of the banks.

Number 2 above is considered the most important by the Coast Line and involved repeated requests by counsel for the Coast Line and refusals by the witness upon advice of counsel to supply the information, although the witness originally agreed to do so. At the hearing held prior to the final reopened hearings, the duPont estate had been requested by other counsel to disclose the prices at which it had acquired its bonds of the debtor and had refused to do so unless all other parties were also required to do so. The presiding officer at that hearing ruled that the information from all parties was desirable but did not order that it be produced. With one minor exception none of the parties complied with the request. At the final hearing, counsel for the St. Joe Company, after examining the annual report of that company, refused to permit Ball to produce the report on the ground that it would disclose this information and reiterated his refusal to do so in the absence of a like disclosure by the other parties. Finally after much discussion, counsel for the Coast Line stated that he was interested in obtaining the annual report not primarily for the purpose of ascertaining the

prices at which the St. Joe Company acquired its bonds but in order to determine "the present real value * * * of the investments which are held by the St. Joe Paper Company." Counsel for the St. Joe Company replied that the balance sheet in the annual report showed cost values only.

Ball produced a condensed balance sheet which gave the information as to the company's investments as shown in 3 and 4 above, but without breakdown. However, he enumerated all companies in which the investments are held.